

## Logix Microsystems Limited – ITAT – Bangalore

**Outcome:** **Against** taxpayer

**Category:** Recharacterization of share application

Tax Court rejects taxpayer's treatment of share application money sent to its AE, and treats it as an international transaction.

In the year under assessment, the taxpayer subscribes certain equity shares of its overseas AE. Accordingly, the AE did not allot the shares of the taxpayer which prompted the tax officer to treat the share application money as an international transaction in the nature of debt.

Accordingly, Tax Court observes that the AE has not yet allotted shares against the shares applied by the taxpayer. Further, as the taxpayer has not been allotted any shares in the year under consideration, there has been a clear delay in the allotment.

Tax Court places reliance on Section 92B of Income-tax Act 1961, and observes the transaction would have an impact on the profits, losses and assets of the taxpayer, and would be constituted as an advance to the AE.

## Novell Software Development India Pvt Ltd – ITAT – Bangalore

**Outcome:** **In favour** of Taxpayer

**Category:** Depreciation Adjustment

Tax Court rules and directs tax officer to exclude an appropriate amount of depreciation in respect of computing operating margin of taxpayer as well as comparable companies.

Accordingly, the taxpayer adopts higher rates of depreciation against the rates used by the comparable companies. Tax Court notices that while the intermediary authority granted an adjustment, it did not consider expenses

relating to repairs, maintenance and lease rentals that would have an impact on the depreciation amount. Further, explaining from a commercial sense, Tax Court states that a newly installed plant and machinery would incur more depreciation than an old machinery, while the repairs and maintenance expenditure relating to an old plant & machinery would be higher than that of a new one. Therefore, any depreciation adjustment should be granted only as a difference of depreciation charged by taxpayer against comparable companies after reflecting the expenditures on repairs, maintenance and lease rentals, if any.

## Recent News:

### Dissecting the changes to Finance Bill 2017

As expected, the Houses of Parliament have ensured the Finance Bill is passed before the end of the financial year. While the theme of this year's budget has been TEC India, the recent amendments passed by Lok Sabha suggest that the crux remains to ensure ultra-transparency in regulatory and electoral compliance. The key changes to the Finance Bill 2017 are as follows -

- From July 1 2017, Aadhar Number has been made mandatory for taxpayer to mention in their Return of income and PAN application form. In case of default, the taxpayer's PAN shall be deemed as invalid.
- Scope of income now expanded to include any sum or value of property in Section 56(2)(x) of Income-tax Act 1961 ('the Act'). Property received from an individual or trust benefitting relative of the individual or trusts registered u/s 12AA now excluded from Section 56(2)(x).
- Threshold limit of any cash receipts reduced to Rs. 2 Lakhs (Earlier Rs. 3 lakhs)

- New Section 94B of the Act on limiting interest deductions up to 30% for an Indian borrower company, now amended for Indian borrower that ‘incurs any expenditure by interest or of similar nature’ more than Rs. 1 crore in respect of debt issued by AE of borrower. The text ‘incurs any expenditure by interest or of similar nature’ replaces ‘pays interest or similar consideration’.
- Ceiling limit on companies contributing donations to political parties has been removed. Now, companies can donate to political parties through electronic means and maintain anonymity simultaneously. Earlier companies could not contribute donations exceeding 7.5% of the average net profits of last 3 years.
- Scope of Section 115BBDA of the Act (tax on dividend income exceeding Rs. 10 Lakhs) widened to cover all kinds of taxpayers except domestic company, prescribed fund or institutions or a Sec. 12AA registered trust.
- Government has suggested to merge 7 Tribunals and regulate appointment proceedings for Tax tribunals (Tax Courts).

## CBDT releases Circular on ICDS

The CBDT elucidates various questions concerning Income Computation and Disclosure Standards (ICDS) through Circular No. 10 of 2017.

- Clarifies that ICDS has no relation with maintenance of books of accounts and is to be applied only for computation of income under ‘Profits and gains of business or profession’, or ‘Income from other sources’. Further, ICDS is applicable, irrespective of whether a company is Ind-AS compliant or not.
- ICDS to also be applicable to taxpayers who don’t maintain books of accounts and have adopted a presumptive income scheme.

- While relying, and discussing judicial precedents corresponding with ICDS, it has been clarified that ICDS shall be made consistent with the transactional issues from AY 2017-18, the year when ICDS is made applicable.
- In an event of conflict between ICDS and provisions of Income-tax Rules 1962, the provisions of Rules would prevail.
- ICDS provisions shall not be applicable to MAT u/s 115JB of the Act, but will be applicable to AMT u/s 115JC. In case of computation of AMT, adjusted total income would be derived after adjusting total income.
- CBDT declares that the general provisions of ICDS shall apply to all persons (including banks, NBFCs, financial institutions, insurance companies, power sector).
- In respect of ICDS-1 ‘Accounting Policies’, it is clarified that marked to market losses or an expected loss shall apply mutatis mutandis to marked to market gains or an expected profit.
- CBDT clarifies the term ‘reasonable cause’ for changing an accounting policy on the lines of granting taxpayer the flexibility in deserving cases.
- Derivative instruments not falling within the scope of ICDS-VI to be applicable under ICDS-I.
- Notified that retention money as part of overall contract revenue shall be recognised as revenue as per ICDS-III (Construction contracts).
- Relevant provisions of the Act and ICDS to apply to real estate developers, Build-Operate-Transfer projects and lease transactions.
- Non-recovery of interest and royalty could now be claimed as deduction, in view of amendment to Sec. 36(1)(vii), and now the provisions of the Act shall prevail over ICDS provisions.
- In light of ICDS provisions, income (interest, royalty and fees for technical services) chargeable to tax for non-residents, shall be on a gross basis.

- As per ICDS-V, test runs and experimental production before commencement of commercial operations/ production shall be treated as capital expenditure.
- Opening balance (April 1, 2016) of Foreign Currency Translation Reserve ('FCTR') for exchange differences on monetary items for non-integral operations ought to be recognised in AY 2017-18 to the extent it isn't recognized in the income computation earlier.
- In respect of recognition of subsidy, CBDT states that all government grants actually received prior to April 1, 2016 shall be deemed to have been recognized on its receipt and accordingly will be outside the transitional provision while adding that government grants received after April 1, 2016 (for which recognition criteria is also satisfied thereafter) shall be recognized as per ICDS-VII.
- CBDT clarifies that amount already taxed as interest income on accrual basis shall be considered for computation of income under capital gains arising from a sale.
- Under ICDS-VIII, Securities held as stock-in-trade shall be measured by aggregating categorically. After comparing aggregate cost and NRV of each category of security, lower of the two shall be carrying value.
- Portion of borrowing costs capitalized shall be allowable as deduction under the Act. The capitalization of borrowing costs shall be done on 'asset-by-asset' basis. Further, clarifies that bill discounting charges and other similar charges are covered as borrowing costs.
- ICDS-X Transitional Provision clarifies intent to avoid double taxation of income and ensure all provisions or assets and related income are recognized for the previous year commencing on or after April 1, 2016 against the previous year ending on March 31, 2016.
- Employee benefits that are covered by AS 15 shall not be dealt under ICDS-X.
- CBDT clarifies the net effect on the income due to application of ICDS is to be disclosed in Return of Income. Disclosures required under ICDS shall be made in the tax audit report in Form 3CD for persons liable to tax audit only.